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THE LEGAL RELATIONSHIP EXISTING BETWEEN PRINCIPAL, TEACHER,
AND STUDENT IN THE NORTH CAROLINA PUBLIC SCHOOLS

by

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CHAPTER I

INTRODUCTION

Need For This Study

There have been many studies in recent years dealing with the legal status of schools, boards of education, teachers, students, finance and the many other aspects of the educational system at large. These studies have been thorough and of great value to school people but they have dealt with the subjects on a national scale.

Since public schools are a State function and laws governing them are enacted by the legislatures of the various states, it is to be expected that they would vary throughout the nation. However, in many instances they would be quite similar.

Since hundreds of teachers and principals are engaged in the instruction of thousands of children in the public schools of North Carolina, it seems quite fitting, if not necessary, that a study be made whereby the legal relationship existing between the principal, the teacher and the public school student may be set forth in a convenient, usable form. Many difficulties arise throughout the State each year which could be avoided if such source of legal information were available.

At this time no such source of information is available

outside of the Consolidated Statutes, General Statutes, Constitutional provisions, Supreme Court decisions, rulings by the Attorney General of the State, rulings by the State Board of Education and local school boards. Principals and teachers have little time to delve through such extensive legal matter in search of that particular portion which deals with the matter at hand.

Statement of the Problem

This study attempts to give, in ready form, such information as might be needed by principals and teachers of North Carolina in determining their legal rights as well as the rights of the public school child under conditions wherein a criminal or tort action might arise.

Scope of the Problem

That the reader might more readily check the statutes referred to herein for a more comprehensive study of the matter under consideration, the General Statutes of North Carolina were used rather than the Consolidated Statutes of the State.

No attempt was made to cite rulings by the many county boards of education or the governing boards of city administrative units which are intended to deal with local situations. These rulings are of special significance to those directly concerned and are legally enforceable, but they have little value to school people throughout the State.

In view of the fact that each session of the State Legislature passes laws dealing with situations in individual

counties and city administrative units which have no bearing on the school system of the State at large, no attempt was made to check or point out these special statutes. Principals or teachers who are employed in such county or city administrative units should familiarize themselves with these laws or confer with the administrative official of the unit concerned for special provisions which may be applicable to this subject within their unit.

Method

While this study is not intended as a legal guide in order to substantiate statements made herein, a study of the following materials was carefully made:

General Statutes of North Carolina and Cumulative Supplements, Charlottesville: The Michie Company, 1943-1949.

Compulsory School Attendance, Publication No. 253, Raleigh: State Superintendent of Public Instruction, 1945.

Procedures and Regulations for Routing School Busses, Letter to principal, May 2, 1949. Raleigh: State Board of Education, Division of Transportation, 1949.

A Handbook for School Bus Drivers, 1940, Raleigh: North Carolina Department Motor Vehicles, Division of Highway Safety, 1940.

Biennial Report of the Attorney General of North Carolina, Vol. 27, 1944, Vol. 28, 1946, Vol. 29, 1948.

Sessions Laws of North Carolina, Charlottesville: The Michie Company, 1943-1949.

North Carolina Records, Charlottesville: The Michie

Company. Cases cited:

State v Pendergrass, 19 N. C. 365

Hare v Board of Education, 113 N. C. 9

State v Long, 117 N. C. 798

Drum v Miller, 135 N. C. 217

Brittingham v Stadiem, 151 N. C. 299

McInnish v Board, 187 N. C. 494

Scales v Winston-Salem, 189 N. C. 127

Benton v Board of Education, 201 N. C. 653

Moffitt v Davis, 205 N. C. 565

State v Fogler, 211 N. C. 695

Borders v Cline, 212 N. C. 472

Educational Law Simplified, by David Taylor Marke,

New York: Oceana Publications, 1949.

The Discretionary Powers of School Boards, by John D.

Messick, Durham: Duke University Press, 1949.

CHAPTER II

LAWS RELATING TO ADMISSION AND ATTENDANCE

Introduction

Many people believe that the right to attend our public schools is extended to all without responsibility. It should be made known that a child's admission to a public school in this or any other state is based upon the legal fact that he shall have met certain stated requirements until he shall have completed the prescribed course of study, arrived at the age of sixteen years, in North Carolina, or shall have been removed for cause.

The courts have held that the right to attend school and claim the benefits of the public school system is subject to lawful rules prescribed for the government thereof.¹

It is our purpose to discuss lawful rules so prescribed in so far as they relate to admission and attendance.

Age

Article 9, section 2 of the Constitution of North Carolina empowers the General Assembly to provide a uniform system of free schools for the children of the State.²

1. Coggins v Board of Education of City of Durham, 223 N. C. 763.

2. Constitution of North Carolina, Article 9, Section 2.

Under the above stated authority, the State has committed itself to the provision of a uniform system of public schools for all children between the ages of six and twenty-one years. However, persons over twenty-one years of age who have not completed a standard high school course of study may return for the purpose of pursuing vocational courses offered by the school and these students are to be granted the same privileges as other students in the school. For this general program of instruction, no charge is made.³

If children have satisfied all other requirements they may enter the public schools at the age of six years. However, they must have arrived at their sixth year on or before October first of the year in which they enroll, and they must enroll in the first month of the school year.⁴

Evidence of Age

For many years a statement by the parent or guardian as to the correct age of a child who presents himself for admission to the public schools was held to be acceptable for the record. However, in 1945 the Attorney General handed down an opinion in which it was stated that a parent or guardian must present to the teacher or principal satisfactory evidence of the child's age.⁵

In 1949 this opinion was justified in that the public school law was amended to require every such parent or guardian

3. General Statutes of North Carolina, Chapter 115-371.

4. Ibid.

5. Biennial Report of the Attorney General, Vol. 28, p 71.

to furnish a birth certificate or other satisfactory evidence as to the child's age before he could be admitted to the public schools of this State.⁶

Attendance in District

Article 9, section 3 of the Constitution of North Carolina provides for the division of the State into school districts with a public school in each district.⁷

Acting within the authority granted under the above section, the Legislature has empowered the State Board of Education, with the advice of the county board of education, to divide the counties into a convenient number of school districts. The statute provides:

School districts--the state board of education with the advice of the county board of education shall maintain in each county a convenient number of school districts.

There may be one district and one school committee for both races or the races may have separate districts and separate school committees.⁸

The State Board of Education sets up certain standards for both elementary and high schools throughout the State. Many schools go far beyond the minimum requirements set up by the State Board of Education. Schools in adjoining districts may vary widely as to physical equipment, quality of instruction, extra curricular activities, variety of courses offered and in many other respects, although both schools may have the minimum

6. General Statutes of North Carolina, (Cum. Supp.), 1949 Chapter 115-371.

7. Constitution of North Carolina, Article 9, Section 3.

8. General Statutes of North Carolina, Chapter 115-97.

requirements recommended by the State Board of Education.

This gives rise to the difficult question of attendance on the part of those children who live near the boundaries of the two districts, or even well within the districts. The State Board of Education may transfer children from one district to another under certain circumstances but generally speaking, children must attend school in the district in which they live.

This question was settled in 1947 by House Bill #722 which provides: "school children shall attend school within the district in which they reside unless assigned elsewhere by the State Board of Education."⁹

Transfer of Students

Chapter 115-352 of the General Statute states:

It shall be within the discretion of the state board of education, wherever it shall appear to be more economical for the efficient operation of the schools, to transfer children living in one administrative unit or district to another administrative unit or district for the full term of such school without the payment of tuition: Provided, that sufficient space is available in the buildings of such unit or district to which the said children are transferred: provided further, the provision as to nonpayment of tuition shall not apply to children who have not been transferred as set out in this section.¹⁰

The above provision makes it possible in an emergency to transfer, temporarily, any child from one district to another. This transfer permits a child to move from a non-local tax district into a local tax district or city administrative unit without the payment of tuition but the transfer must be made by the

9. Sessions Laws of North Carolina, 1947, Chapter 1077, Section 3, p. 1575.

10. General Statutes of North Carolina, Chapter 115-352.

State Board of Education and under conditions specified in the foregoing statute.

A family or number of families who live on real property contiguous to a local tax district or city administrative unit may petition the county board of education or city administrative unit to be admitted into the special tax district or city administrative unit. If the petition is approved by the county board of education or the board of trustees of the city administrative unit, a levy upon the property and poll of each individual who is admitted shall be the same as that levied upon property and polls of those who reside within the special tax district or city administrative unit.¹¹

In making transfers such as has been indicated in the foregoing paragraphs, it shall be assumed that the county board of education has made the proper decision in the matter. The burden of proof to the contrary shall be upon the complaining party or parties. The General Statutes provide:

In all actions brought in any court against a county board of education for the purpose of compelling the board to admit any child or children who have been excluded from any school by the order of the board, the order or action of the board shall be presumed to be correct, and the burden of proof shall be on the complaining party to show to the contrary.¹²

In the light of the information contained in the above statute, it is clearly intended that all children who live within an established school district shall attend school within

11. Ibid., Chapter 115-100.

12. Ibid., Chapter 115-49.

such district unless transferred by the County Board of Education, with the approval of the State Board of Education.

Many families find themselves living on the border line between two school districts and within easy walking distance of school busses going to schools in both districts. In such instance, the county board of education has full authority to designate the school to which the child or children shall go. In many instances this problem is delegated to the principals of the schools involved. In all such instances such transfers should be approved by the principals as well as by the county board of education. Should a child or children provide transportation to a school outside the district in which they reside, said district being a non-local tax district, his right to admission would still depend upon the permission of the County Board of Education with final approval of the State Board of Education.

Special Tax Districts

Legal attendance of children residing in a local tax or a special tax district is clearly set out in the General Statutes. The provision is as follows:

The following persons residing in local tax or special school taxing districts shall be entitled to all the privileges and advantages of the public schools of said district or districts unless removed from school for cause:

(a) All residents of the district who have not completed the prescribed course for graduation in the high school.

(b) All children whose parents have recently moved into the district for the purpose of making their legal residence in the same.

(c) Any child or children living with either

the father or the mother or guardian who has made his or her permanent home within the district.

(d) Any child received into the home of any person residing in the district as a member of the family, who receives board and other support free of cost.¹³

Children in Orphanages.—Children who are residing in orphanages are considered resident of the district in which they live. The statutes provide:

Children living in and cared for and supported by any institution established or incorporated for the purpose of rearing and caring for orphan children shall be considered legal residents of the unit or district in which the institution is located, and a part or all of said orphan children shall be permitted to attend the public school or schools of the unit or district.

Provided, that the provisions of this section shall be permissive only, and shall not be mandatory.¹⁴

After the close of the regular session of the public school or schools to which orphan children are assigned, by mutual agreement between the board of trustees and officials of such orphanage, tuition may be charged for the remainder of the school term.¹⁵

Feeble Minded Children

The General Statutes require every child who has reached his seventh but not his sixteenth birthday to attend school continuously for a period of time equal to that which the public school in his district shall be in session.¹⁶ However, there are certain exceptions to these provisions. The General Statutes provide:

Mental incapacity shall be an excuse for non-attendance, and is interpreted to mean feeble-mindedness or such nervous disorder as to make it either impossible for such a child to profit by instruction in the school or impracticable for the teacher properly to instruct the normal pupils of the school.¹⁷

13. Ibid., Chapter 115-213.

14. Ibid., Chapter 115-67.

15. Ibid., Chapter 115-68.

16. Ibid., Chapter 115-302, (Cum. Supp.) 1949.

17. Ibid., Chapter 115-303.

The teacher shall report such a child through channels to the State Board of Charities and Public Welfare. This Board will cause an examination to be made and report its findings to the superintendent concerned. If the child is found to be mentally unfit to attend the public schools, he may then be excluded and a written report filed with the superintendent concerned.

Deaf and Blind Children

Deaf and blind children of the State are subject to the provisions of the general compulsory attendance law, however, special provision is made for their education under the law. This statement presupposes a sound mind in each instance. The State has provided special institutions wherein deaf and blind children may receive instruction especially fitted to their individual needs. The General Statutes provide that:

Every deaf and every blind child of sound mind in North Carolina who shall be qualified for admission into a state school for the deaf or the blind shall attend a school for the deaf or the blind for a term of nine months each year between the ages of seven and eighteen years. Parents, guardians or custodians of every such blind or deaf child between the ages of seven and eighteen years shall send or cause to be sent, such a child to some school for the instruction of the blind or deaf as herein provided. . . whenever a deaf or blind child shall have reached the age of eighteen and is still unable to become self-supporting because of its defects, such a child shall continue in said school until it reaches the age of twenty-one unless it becomes self-supporting sooner.¹⁸

Parents or guardians of deaf and blind children who fail to send such children to some school for instruction are liable under the law. However, they may await written instructions

18. Ibid., Chapter 115-309.

from the superintendent of such institutions requesting them to come for instruction.¹⁹

Immunization

Before a child may enter the public schools of North Carolina, he must present a certificate of immunization against smallpox, diphtheria and whooping cough. These certificates of immunization must be signed by a physician licensed to practice in North Carolina. Should the attempt to gain immunity against either or all of the diseases listed above prove detrimental to the health of the child, he may present a certificate from a physician licensed to practice in North Carolina stating this to be a fact. Such certificate will be accepted in lieu of the certificate of immunization. However, as soon as his health will permit, he must still take the proper steps to acquire such immunity through accepted methods.

The statutes on immunization provide:

Whooping cough-All children of North Carolina are required to be immunized against whooping cough before reaching the age of one year. . . .²⁰

No teacher or principal shall admit a child to any public, private or parochial school without this certificate or other satisfactory evidence of such immunization. However, should such a child be a member of a recognized organization or religious nature whose teachings are against such practices, he will not be required to present such a certificate.²¹

19. Ibid., Chapter 115-310, (Cum. Supp.) 1949.

20. Ibid., Chapter 130-190, (Cum. Supp.) 1949.

21. Ibid.

Small-pox-All children in North Carolina are required to be immunized against small-pox before attending any public, private or parochial school. The physician administering the vaccine shall send a certificate to the local health department and give a copy to the parent or guardian of the child to whom the vaccine was administered.

It shall be unlawful for any principal or teacher to permit any child to enter any public, private or parochial school without the certificate presented to him or his parent or guardian at the time of his immunization or other acceptable evidence of such immunization.²²

Diphtheria-No principal or teacher shall permit a child to enter a public, private or parochial school without presenting a certificate of immunization against diphtheria However, children of parents who are bona fide members of a recognized religious organization whose teachings are contrary to the practices herein required shall not be required to present such certificate of immunization.²³

In either of the foregoing instances if the vaccine proves detrimental to the health of the child, vaccination may be postponed until such condition has been removed.

Married Students

It is generally understood that after marriage young couples should, and generally do, accept the full responsibilities associated therewith. However, if they are under sixteen years of age, they are still subject to the provisions of the general compulsory attendance law. Unless they can qualify under some of the exceptions listed therein, they are subject to the provisions of General Statutes, Chapter 115-302.

The teacher or principal to whom either presents himself for instruction cannot refuse the benefit of school. The Attorney General of North Carolina, in an opinion handed down in 1945, states in effect that because a pupil is married does

22. Ibid., Chapter 130-183, (Cum. Supp.) 1949.

23. Ibid.

not within itself constitute grounds for refusing the benefit of school.²⁴

In another opinion handed down in 1944, he states, in effect, that the principal of a school would not be authorized by General Statutes, Chapter 115-145 to refuse admission to a girl who had become a mother out of wedlock.²⁵

A married student is subject to the same rules and regulations prescribed for other students in the school. His continued attendance would depend upon his willingness to accept the fact that although his personal life might differ from that of the other students, his school life must follow essentially the same course as though he were unmarried.

Pregnancy

It would be a simple matter to exclude from school a girl who was pregnant under chapter 115-145 of the General Statutes. The difficulty encountered in such procedure would be the positive establishment of the fact. However, in the case of married students, the establishment of the fact would be the simplest matter which would confront the principal or teacher. There would be no question of immorality, disreputable conduct, or violation of the school regulations involved. It would be the problem of the school official to determine whether or not, under what circumstances and to what extent, such student would present a menace to the school. If and when the establishment of the presence of menace to the other students of the

24. Biennial Report of the Attorney General, Vol. 28, p. 71.

25. Ibid., Vol. 27, p.60.

school became a fact, then such student could be excluded from the school.²⁶

The question of pregnancies became a problem during and since World War II when many young married girls whose husbands were called into foreign service were left with nothing to do but return to school. Many local boards of education and boards of trustees passed local regulations which were sufficient to cope with the situation. If this has not been done, such boards would have authority to do so under chapter 115-55 of the General Statutes, which states:

All powers and duties conferred and imposed by law respecting public schools, which are not expressly conferred and imposed upon some other officials, are conferred and imposed upon the county board of education.²⁷

The courts have held: "the county board of education is given discretionary powers to direct and supervise the county school system for the benefit of all the children therein. . . with which the courts will not interfere in the absence of its abuse".²⁸

If a local board passed such regulation whatever its provisions might be, as long as it acted in good faith without prejudice or misuse of power, it could delegate such powers to the principal or teacher who would be legally responsible for its enforcement.

26. General Statutes of North Carolina, Chapter 115-145.

27. Ibid., Chapter 115-55.

28. McInnish v Board, 187 N. C. 494.

In the absence of some regulation by the local board of education or board of trustees, the principal or teacher could either refer the matter to the board for consideration and action or move within his own right under Chapter 115-45 of the General Statutes.

Race

Since the State provides a uniform system of free public schools for all the children within its boundaries and states that a child shall attend the public schools within the district in which he resides, one might think he could attend any public school located in the district. It must not be forgotten that the child must attend the school to which he has been assigned by the county board of education. Then there is a further exception in the case of negroes and Croatan Indians for whom separate schools are provided. In making this exception, there is to be no discrimination between the races.

Article 9, section 2 of the Constitution of North Carolina states in effect that the white children shall have schools provided for the white children and the negro children shall have schools provided for the negro children but there shall be no discrimination in favor of either race.²⁹

The legislature of North Carolina in the establishment of our system of free public schools for all the children of the State provides:

. . . that the children of the white race and the children of the colored race shall be taught in separate

29. Constitution of North Carolina, Article 9, Section 2.

public schools, but there shall be no discrimination in favor of or to the prejudice of either race. All white children shall be taught in public schools provided for the white race, and all colored children shall be taught in public schools provided for the colored race; but no child with negro blood, or what is generally known as Croatan Indian blood, in his veins, shall attend a school for the white race and no such child shall be considered a white child. The descendants of the Croatan Indians, now living in Robeson, Sampson and Richmond Counties, shall have separate schools for their children.³⁰

Specific reference is made in the General Statutes with reference to the Indians of Persons County. These are the descendants of 'White's Lost Colony' which resided in the eastern portion of this State. These Indians are to be hereinafter referred to as the 'Indians of Persons County'. The Croatan Indians are to be designated hereinafter as 'The Cherokee Indians of Robeson County'.³¹

Provision is made for separate schools for the children of the above named Indians with their records and reports kept separate from those of all other children in the State.

The Cherokee Indians of Western North Carolina have schools provided for them by the Federal Government but they are frequently admitted into public schools for white children. Concerning the Cherokee Indians of Western North Carolina, the Attorney General has ruled:

Resident members of the Eastern Band of the Cherokee Indians of Western North Carolina are, of course, citizens of this State, and there is nothing in our State Constitution or statutes which prohibits a child whose parents are members of the Eastern Band of the Cherokee Indians

30. General Statute of North Carolina, Chapter 115-2.

31. Ibid., Chapter 115-66.

of Western North Carolina from attending a public school along with white children, provided such Indian child is qualified as to age, residence and otherwise.³²

Determination of Racial Status

It is not the duty of the principal or the teacher but the duty of the board of education or board of trustees to pass upon and determine the racial status of any child within the county should the question of his attendance in a white school be questioned.

The Attorney General states: "It is a proper function of a county board of education to determine the racial status of a child for the purpose of assignment to the proper school within the county administrative unit."³³

The statutes have provided a yardstick which is to be used in determining the racial status of an individual but since this is not a function of principals or teachers, but boards of education, it will be discussed no further.

It might be of value to note that the courts have held that the burden of proof rests upon the plaintiff in his establishment of the degree of negro blood in his veins.³⁴

No Constitutional provision nor statute was found which would prohibit the child of a parent of any nationality or race other than the Negro or the Indian of Eastern North Carolina from entering a public school for white children.

32. Biennial Report of the Attorney General, Vol. 29, p. 79.

33. Ibid., Vol. 28, p. 671.

34. Hare v Board of Education, 113 N. C. 9.

Summary

Although the State provides a system of free schools for all of the children in the state, there are many conditions which must be met by the student before he may enter and enjoy the benefits so provided. By so doing, the State has protected the interests of all concerned. These conditions are:

1. The right to attend a public school is subject to lawful rules and regulations prescribed for the government thereof.
2. Children may enter school at the age of six years as of October first of the year in which they enter. They must enter in the first school month. A birth certificate or other satisfactory evidence as to their age must be presented before they may enroll.
3. Children must attend school in the district in which they reside unless transferred elsewhere by the county board of education with the permission of the State Board of Education. They may become a part of a special tax district upon approval of a written petition by the board of the special taxing district and by paying the same tax as those who reside within the special district.
4. All children or wards of those standing in loco parentis may attend special tax or local tax supported schools provided said children reside in the local or special tax district.
5. Feeble minded children are exempt from the provisions of the compulsory school law.
6. Deaf and blind children are subject to compulsory attend-

ance law. They must attend school between the age of seven and eighteen years but shall be placed in special institutions provided for them.

7. Children must be immunized against diphtheria, small-pox and whooping cough before they can enter a public, private or parochial school. Bona fide religious objections and health difficulties because of immunization excepted.
8. Married students may enter school. They are subject to the provisions of the compulsory attendance law. Pregnant wives may be excluded from school. School boards have the power to make regulations concerning same.
9. Children of the white race and children of the colored race are required to have separate public schools as are the children of the Indians of Eastern North Carolina. Cherokee Indians of Western North Carolina may enter public schools for white children. Boards of education shall determine the racial status of any child in question. No Constitutional provision or statute prohibits the children of any nationality other than Negro or Indian of Eastern North Carolina from entering the schools established for the white children of the State.

CHAPTER III

LAWS RELATING TO COMPULSORY SCHOOL ATTENDANCE

Introduction

Regular school attendance is an essential factor in the elevation of the whole citizenship toward a satisfactory level of general education and wholesome civic, social, moral, and spiritual satisfaction. It is unfortunate that thousands of children drop out of school, for reasons too numerous and complex to mention here, long before they have finished the prescribed course of study required for graduation from the high schools of North Carolina.

Were it not for the Compulsory School Attendance Law, thousands would drop out before they had completed the course of study in the grammar schools. These drop outs would be brought about because of as many or more reasons than are found in a study of those who leave before graduation from the high school.

Satisfactory or adequate instruction is impossible where a student is irregular in attendance. Continued irregularities tend to cause a lagging interest on the part of the student. The record shows for the year 1944-45 there were almost sixty thousand absences each day school was in session. The same record also shows over forty five thousand pupils

stopped school to enter employment or for one of many other reasons.¹

The Compulsory School Attendance Law is designed to improve attendance in the public schools not necessarily by forcing children to remain in school but by assuring many of them the opportunity of attending school where otherwise they would be kept out for various reasons. It also assures the parents of legal assistance in case parental authority has ceased to be sufficient to cause the child to remain in school until he has had an opportunity to profit by so doing.

The enforcement of the Compulsory School Attendance Law is a responsibility of the County or City Superintendent of Public Welfare, the county board of education or board of trustees of a city administrative unit, principals and teachers. However, an administrative unit may employ a special attendance officer whose duties shall be to enforce the provisions of the above law.²

Age Provisions

The General Statutes provide:

Every parent, guardian or other person in the state having charge or control of a child between the ages of seven and fifteen years during the twelve months following July first, one thousand nine hundred and forty five, and between the ages of seven and sixteen years thereafter shall cause such child to attend school continuously for a period equal to the time which the public school in the district in which the child resides shall be in session. . .³

1. State Superintendent of Public Instruction, Compulsory School Attendance, Publication No. 253, Raleigh: 1945, p. 3.

2. Ibid.

3. General Statutes, Chapter 115-302, (Cum. Supp.) 1949.

Under this section of the law, principals and teachers have the right to excuse a child for temporary absences which are beyond his control. There is nothing in the law which will compel a child to attend school when good common sense and judgment require his presence at home or elsewhere.

If a child shall attend a private school or study under the supervision of a private tutor, the private school must receive the approval of the county superintendent of public instruction and the courses of instruction under the private tutor must run concurrently with the public school in the district and must extend for as long as the term.⁴

Rules and Regulations

Chapter 115-303 of the General Statutes directs the State Board of Education to:

. . . formulate such rules and regulations as may be necessary for the proper enforcement of the provisions of his article. The board shall prescribe what shall constitute truancy, what causes may constitute legitimate excuses for temporary non-attendance due to physical or mental inability to attend, and under what circumstances teachers, principals or superintendent may excuse pupils for non-attendance due to immediate demands on the farm or the home in certain seasons of the year in the several sections of the state. It shall be the duty of all school officials to carry out such instructions from the state board of education, and any school official failing to carry out such instructions shall be guilty of a misdemeanor. . . .⁵

Should any city or county administrative unit have a higher compulsory attendance law in operation, it would not be bound by these provisions but the State Board of Education

4. Ibid., Chapter 115-302.

5. Ibid., Chapter 115-303.

would have to investigate and approve such attendance law before these provisions would be inapplicable.⁶

Feeble Minded Children

The same statute makes provision for the non-attendance of feeble minded children or children suffering a nervous disorder of such consequence that they could not profit by instruction in the public schools. School officials must report all such cases to the County Superintendent of Public Welfare who shall in turn report same to the State Board of Charities and Public Welfare. The latter agency will cause an examination of the child to be made. If he is found suffering such mental difficulty as to cause his presence in the school to be a disturbing factor in the instruction of other children, he may be excluded from the school. Full record of the proceedings must be filed with the county superintendent of public instruction.⁷

Enforcement

The superintendent of public welfare or the attendance officer provided by a county or city administrative unit is charged with the enforcement of the Compulsory Attendance Law. If no attendance officer or truant officer is provided by an administrative unit, the Superintendent of Public Welfare will investigate and prosecute such cases. Teachers and principals are required to make reports of all unlawful absences to such officers and

. . . in his hands, in case of any prosecution, constitute prima facie evidence of the violation of this

6. Ibid.

7. Ibid., Chapter 115-302.

article, (Compulsory School Attendance Law) and the burden of proof shall be upon the defendant to show the lawful attendance of the child or children upon an authorized school.⁸

Children Who Must Work

If any child is required to work for the support of either himself or the family and such child is within the compulsory school age, the parent or person in loco parentis must make an affidavit to this effect. The attendance officer is required to make a thorough investigation of the matter and present his findings to the juvenile court. If the court shall find such reasons justified, it will report its findings to the county board of education or city board of trustees for action and assistance.⁹

If after aid to an indigent child has been recommended by the juvenile court, the county board of education may cause funds to be appropriated not to exceed \$10.00 per month for each child so found in need. It is the duty of the attendance officer to assure the spending of such funds for the purpose for which it was appropriated else such funds may be withdrawn.¹⁰

Deaf and Blind Children

The General Statute provide that:

Every deaf and every blind child of sound mind in North Carolina who shall be qualified to admission into a state school for the deaf or the blind for a term of nine months each year between the ages of six and eighteen years. . . . Whenever a deaf or blind child shall reach

8. Ibid., Chapter 115-304.

9. Ibid., Chapter 115-307.

10. Ibid., Chapter 115-308.

the age of eighteen and is still unable to become self-supporting because of its defects, such a child shall continue in said school until it reaches the age of twenty-one, unless it becomes self-supporting sooner.¹¹

It is the duty of the county superintendent of public instruction to report the names of parents or persons in charge of deaf, dumb, blind or feeble-minded children to the principal of the school wherein each should be in attendance.¹²

Excused Absences

Whether or not an absence in excusable will provide grounds for possible prosecution of a parent or guardian or persons having in charge a child who is within the compulsory school age. In the light of these circumstances, it seems a wise procedure to quote, verbatim, the provisions set forth in Publication Number 253, Compulsory School Attendance. A total of eleven situations are listed with clarifying statements wherein absences may be excused by the principal or the teacher. They are as follows:

1. Illness of the child that incapacitates the child from attending school shall constitute a legitimate excuse for non-attendance. The principal or teacher, however, shall require a physician's certificate if a child is continually absent for illness, unless the teacher is satisfied that the child is really unable to attend school. But wherever it is inconvenient to secure a physician's certificate, it shall be the duty of the teacher to investigate continued absence for illness, and if the teacher is not satisfied that the reputed illness is sufficient cause for absence, she shall report the case to the county health officer for final decision.

2. Illness in the family is a legitimate excuse for non-attendance wherever it is apparent that the child's

11. Ibid., Chapter 115-309.

12. Ibid., Chapter 115-312.

services are needed in the home or wherever there may be danger of spreading a contagious disease.

3. Death in the immediate family is likewise a legitimate excuse for non-attendance.

4. Quarantine is, of course, a legitimate excuse, and quarantine shall be understood to mean isolation by order of the local or State Board of Health.

5. Physical incapacity shall be an excuse for non-attendance. This shall be interpreted to mean physical defects which make it difficult for the child to attend school, or which render the instruction of the child impracticable in any other than special class or a special school. Wherever possible, special classes should be provided for such pupils, who would be encouraged though not required to attend.

6. Mental incapacity shall be an excuse for non-attendance, and is interpreted to mean feeble-mindedness or such nervous disorder as to make it either impossible for such child to profit by instruction given in the school or impracticable for the teacher properly to instruct the normal pupils of the school. In the case of feeble-minded children the teacher shall designate the same in her reports to the county superintendent of public welfare, and it shall be his duty to report all such cases to the State Board of Public Welfare.

7. Severe weather, that may be dangerous to the health or safety of the children in transit to and from school, shall constitute a legitimate excuse for non-attendance.

8. Distance from the school shall constitute a legitimate excuse for non-attendance if a child resides two and a half-miles or more by the nearest route of travel from the schoolhouse or an established bus route.

Note: the present law on State transportation of pupils provides that the bus route shall come within one mile of the child unless road or other conditions make it inadvisable.

9. Poverty in certain cases may be a legitimate excuse, but all such cases must be reported to the county superintendent of public welfare. Co-operation of individuals and organized agencies engaged in specialized social work should be invoked by the teacher. In this connection, school officials are referred to sections 115-307 and 115-308 of the compulsory attendance law printed elsewhere in this pamphlet. Aid to indigent children is now under the county welfare budget under the direction of the county superintendent of public welfare.

10. The completion of the course of study of the public school attendance area in which the child resides shall excuse the child from attending school, although said child may not have reached his fifteenth birthday.

11. Demands of the farm and home. Section 115-303 of the compulsory school act provides that "immediate demands of the farm or home" in certain seasons of the year in the several sections of the State shall constitute a legal excuse for temporary non-attendance, and the State Board of Education is authorized to formulate such rules and regulations as it may deem necessary to meet the provisions of this act. Since the conditions in different parts of the State are so unlike, the State Board of Education authorizes the county boards of education and the governing authorities of city administrative units to excuse temporary non-attendance in any particular county where the agricultural conditions are such as to show a reasonable need for the services of the children, under the following conditions:

- a. Where it is apparent that the demands of the farm are serious enough to require the immediate services of the child, and
- b. Where it is apparent that sufficient assistance to meet these demands is not at hand and cannot be secured.
- c. Where it is apparent that the demands of the home, due to sickness or other causes, are such as to call for the immediate assistance of any child, and
- d. Where it is apparent that immediate assistance is not available in the home and cannot be secured.

There is no desire to work any hardship on any community. The object is to secure attendance first, and not to make the law so stringent as to work a hardship. It is well known that in the trucking season of the year the assistance of the children is necessary. In other sections of the State agricultural demands may be such as to make the assistance of the older children necessary. But it hardly can be said that the children under ten years of age can be of much assistance, either in the cases of farm or domestic needs.

In such seasons of the year it might be wise to open school earlier and close about 12 or 1 o'clock, thus permitting the pupils to attend school the first half of the day and to aid their parents the second half. This has been tried with success in certain districts and only a very few students are actually required in the home or in the fields during the school season.

Note: Some counties have found it advantageous to divide the term by suspending the operation of the schools

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Note: Some counties have found it advantageous to divide the term by suspending the operation of the schools

during cotton picking time.³⁰

Unlawful Absences

Truancy-Any absence which cannot be excused under one of the foregoing provisions would be considered unlawful. A definition of truancy together with a list of other unlawful absences as listed in the foregoing publication is given below:

Truancy is here defined to mean absence from school on the part of the child without the consent of the parent. The school should co-operate in every way possible with the parent to prevent or correct truancy, and the necessity for assuming this responsibility should be impressed upon the parent. It is particularly important to correct truancy in its early stages, because if not corrected there, it usually leads to serious forms of delinquency.

Any child who willfully absents himself from school for at least one day, is guilty of truancy, and it shall be the duty of the teacher to explain this law to the pupil and parent. If the child persists in willfully absenting himself from school, the teacher shall report the same to the principal and he to the attendance officer.

Other unlawful absences-Section 115-305 of the compulsory attendance act provides that any parent or guardian violating the provisions of this act shall be guilty of a misdemeanor, that is, if any parent is the cause of the child's non-attendance by keeping said child at home or permitting the child to be employed in any way contrary to the Child Welfare Law (Chapter 110 of the Code), he shall be guilty of a misdemeanor and the penalty is prescribed in section 115-305.

All absences due to the consent or indifference of the parent shall be considered unlawful absences. Such absences shall not be construed as truancy, but as violations of section 115-305 of the compulsory attendance law.

Parents who refuse to comply with the health regulations of a community, such as compulsory vaccination, thereby causing their children to be excluded from the school, are responsible for the non-attendance of their children and come within the provisions of section 115-305 of the compulsory school law.¹⁴

13. Compulsory School Attendance, p. 16-18.

14. Ibid., p. 18-19.

Suspension

Since all children of sound mind are required to attend school for the length of time the school in the district in which he resides is in session, the suspension of such child for any infraction of school regulations or a series of infractions becomes a matter of serious consequence.

Concerning this matter the State Board of Education says:

Whenever the conduct of any pupil in school is such as in the opinion of the teacher should merit suspension, the teacher shall report the child, together with the causes for suspension to the principal; and if upon investigation the principal deems suspension advisable, he shall make the order of suspension and report the child and the cause of suspension to the attendance officer, who may carry the child before the judge of the juvenile court having jurisdiction in the matter.

The teacher and parent should co-operate to save the child to the school, and the teacher should use great caution in handling such cases, for suspension should always be the last resort of a teacher. No child should be suspended unless it is evident that the welfare of the school is endangered by his presence. Moreover, teachers should not hesitate to reinstate a pupil if it is at all evident that the child may be reclaimed, and a reinstatement should be allowed by the juvenile court as a part of the conditions of probation for the child.¹⁵

Enforcement by School Officials

The duties of the teacher, principal and the attendance officer are outlined with suggested procedures. The duties are given without reference to suggested procedures...

The Teacher-to inform the parents and pupils of the importance and value of regular school attendance.

...To ascertain the cause of non-attendance and thus determine when an absence is excused or unexcused in the legal sense. (See Rules and Regulations of the State Board of Education and section 115-144 of the General Statutes of North Carolina). . . .

^{15.} Ibid., p. 19.

The Principal-the principal, as head of the school, shall assume the responsibility for the enforcement of the compulsory attendance law and the Rules and Regulations adopted by the State Board of Education in relation thereto in the following particulars:

- a. He shall, in so far as it related to his activities, utilize the means outlined under 1-a above to inform pupils, parents and teachers as to their respective duties in respect to school attendance.
- b. He shall keep a supply of each of the prescribed forms on hand for the use of himself and the teachers working under his supervision. These he will secure from the superintendent or mimeograph them in accordance with forms suggested and approved by the superintendent.
- c. He shall report on the forms prescribed cases of unlawful absence to the attendance officer.

(1) Report of Unlawful Absences. When the principal received a report from the teacher that a child is or was unlawfully absent from school, he shall report that child's absence to the attendance officer on the form provided for that purpose (Form C5) and give the information in detail concerning each person so reported as indicated on the form. He shall prepare such reports on unlawful absence in duplicate, sending both copies to the attendance officer. Whenever possible, it is suggested that the principal confer in person with the attendance officer concerning each particular case and giving additional facts surrounding each violation of the law which are not indicated on the form. (see B below--"Attendance Officer.")

(2) Court Cases. In case a child or parent is reported to the court for failure of the child to attend school, the principal may be called as a witness in the case; and it will be his duty to appear when so called at the time and place specified, and have with him the teacher's report of unlawful absence (Form C5) as well as the teacher in person, if available.

- d. He shall report to the welfare superintendent the "School Record," Form D. L. 4, of any child who expects to enter employment following the close of the school term. . . .

The Attendance Officer- it is the duty of the attendance officer under the law 'to investigate and prosecute all violators' of the compulsory attendance law.¹⁶

16. Ibid., p. 10-21.

The attendance officer should report the proceedings in any investigation or prosecution to the principal of the school.

It is strongly urged that written excuses be required of all children upon the day they return to school stating the reason for non-attendance. This will save the teacher much time in sending out notices of absence as well as cause the child and the parent or guardian to become attendance conscious.

Report form C3- Notice of Absence and report form C5- Report of Unlawful Absence are required of all teachers and principals. These forms may be obtained from the superintendent of the schools in any county or city administrative unit.¹⁷

Satisfactory school attendance cannot be obtained through legal channels. If the child is within the compulsory school age, and cannot qualify under one of the accepted reasons listed by the State Board of Education, his presence can be required but this cannot provide the mental attitude so necessary for acceptable educational progress.

Summary

The Compulsory Attendance Law is designed to keep in school those children who do not want to attend as well as to assure this right in fact to those who would attend if they were permitted to do so.

Children between the ages of seven and sixteen years must attend a school continuously for the duration of the term in the district in which they live.

17. Ibid., p. 22.

The Superintendent of Public Welfare is the attendance officer in units which do not employ a special attendance officer.

Blind and deaf children must attend a school provided for them by the State. They must attend between the ages of seven and eighteen years but may attend until they have reached the age of twenty-one years if needed.

The principal or the teacher of the school may excuse children for absences caused by personal illness, death in the family, illness in the family, quarantine, physical incapacity, mental incapacity, severe weather, distance from the school, poverty, completion of the course of study and certain demands of the farm and home.

Truancy is defined as the absence of the child from school without the consent of the parent. Any absence other than for the reasons listed in the preceeding paragraph are deemed unlawful.

The teacher, the principal and the superintendent have definite roles to play in the enforcement of the attendance laws.

CHAPTER IV

LAWS RELATING TO PUPIL CONTROL

Introduction

This study is not concerned with the wisdom of using a particular type of punishment in the enforcement of rules and regulations formulated for the government of children who attend the schools of the State. It is not concerned with the educational value of the use or failure to use corrective measures of any type. It does not consider the positive or negative reactions to the use of such upon the public relations programs instituted by the educators of the country.

It attempts to show, for the benefit of those concerned, the legal rights of the teacher and the pupil under circumstances where corrective measures are deemed necessary in the enforcement of school regulations.

The legal relationship existing between the principal or the teacher and the public school pupils is very difficult to define. Children may enter the public schools at the age of six years but the law requires every child of sound mind to attend school for a term equal to the time the public school of his district is in session. This attendance is required of all children between the ages of seven and sixteen years.

Authority For Control

Furthermore, the statute requires the principal to exer-

cise discipline over the pupils of the school.¹ As a further requirement, the teacher's duties are defined as follows:

It shall be the duty of all teachers to maintain good order and discipline in their respective schools; to encourage temperance, morality, industry and neatness; . . . to supervise the play activities during the recess, and to encourage wholesome exercise for all children; to teach as thoroughly as they are able all branches which they are required to teach; . . . to ascertain the cause for non-attendance of pupils, and report all violators of the compulsory school law to the attendance officer in accordance with the rule governing attendance and reports. . . .²

Suspension

It is quite obvious that some method of control is an absolute necessity if the above provisions or duties are carried out. The legislature of North Carolina has readily recognized this need and has written into the statutes a provision which may be cited in the solution of any serious problem which might arise. The statute in question states:

A teacher in a school having no principal, or the principal of a school shall have authority to suspend any pupil who willfully and persistently violates the rules of the school or who may be guilty of immoral or disreputable conduct, or who may be a menace to the school. But every suspension for cause shall be reported at once to the attendance officer, who shall investigate the cause and shall deal with the offender in accordance with rules governing the attendance of children in school.³

The above statute gives the principal or the teacher a very effective means of removing undesirable children from the school. It applies to children of all ages and sexes. However, such measures are drastic and should be used with considerable caution. The suspension or exclusion of a child from the public

1. General Statutes, Chapter 115-148.

2. Ibid., Chapter 115-144.

3. Ibid., Chapter 115-145.

school defeats the very purpose for which the schools are maintained and operated. It deprives him, even though his conduct at the time is such that his presence with the group may not be tolerated, of the opportunity of acquiring the necessary education and training which is, in his case, sorely needed for his development into a desirable and worthwhile citizen. It is therefore, essential that the principal or the teacher be legally allowed to use other measures of correction short of suspension or exclusion from school.

Punishment Short of Suspension

This brings up the question of punishments short of suspension. What authority has the principal or the teacher in the infliction of corrective measures short of suspension? The statutes do not set punishments for stated offenses nor can they. The same offense committed by different children would not merit nor justify the same punishment because of the element of mental maturity, social background, underlying cause of the offense and its effect upon those directly concerned. These have a definite bearing upon the type of punishment justified. Each violation of the rules of the school should be disposed of in the light of its own circumstances and with considered regard for the personality of the child involved.

Many cases have been tried in our courts where schoolmasters were charged with assault. The most famous of these and the one which is used today as the outstanding judicial interpretation of this relationship which exist between schoolmaster and student and the extent to which the schoolmaster can use

corrective measures upon a child is the State v Pendergrass. This judgment handed down in 1837 by the Supreme Court of North Carolina has never been outmoded or reversed. It should be studied carefully by all schoolmasters and teachers who exercise the right of correction upon their pupils. It is given here in full:

The State v Rachel Pendergrass
June term 1837
Opinion: Hon. William Gaston

Statement:

The law confides to schoolmasters and teachers a discretionary power in the infliction of punishment upon their pupils, and will not hold them responsible criminally, unless the punishment be such as to occasion permanent injury to the child; or be inflicted to gratify their own evil passions.

The Case

The above indictment was for assault and battery at Caswell:

The defendant kept a school for small children; that upon one occasion, after mild treatment towards a little girl, of six or seven years of age, had failed, the defendant whipped her with a switch, so as to cause marks upon her body, which disappeared in a few days. Two marks were also proved to have existed, one on the arm, and another on the neck, which were apparently made with a larger instrument, but which also disappeared in a few days.

The Judgment

Gaston: It is not easy to state with precision, the power which the law grants to schoolmasters and teachers, with respect to the correction of their pupils. It is analogous to that which belongs to parents, and the authority of the teacher is regarded as a delegation of parental authority. One of the most sacred duties of parents, is to train up and qualify their children, for becoming useful and virtuous members of society; this duty cannot be effectually performed without the ability to command obedience, to control stubbornness, to quicken diligence, and to reform bad habits; and to enable him to exercise this salutary sway, he is armed with the power to administer moderate correction, when he shall believe it to be just and necessary. The teacher is the substitute of the parent; is charged in part

with the performance of his duties, and in the exercise of these delegated duties, is invested with his power.

The law has not undertaken to prescribe stated punishments for particular offenses, but has contented itself with the general grant of the power of moderate correction, and has confided the graduation of punishments, within the limits of this grant, to the discretion of the teacher. The line which separates moderate correction from immoderate punishment, can only be ascertained by reference to general principles. The welfare of the child is the main purpose for which pain is permitted to be inflicted. Any punishment therefore, which may seriously endanger life, limbs or health, or shall disfigure the child, or cause any other permanent injury, may be pronounced in itself immoderate, as not only being necessary for, but inconsistent with, the purpose for which correction is authorized. But any correction, however severe, which produces temporary pain only, and no permanent ill, cannot be so pronounced, since it may have been necessary for the reformation of the child, and does not injuriously affect its future welfare. We hold, therefore, that it may be laid down as a general rule, that teachers exceed the limit of their authority when they cause lasting mischief; but act within the limits of it, when they inflict temporary pain.

When the correction administered, is not in itself immoderate, and therefore beyond the authority of the teacher, its legality or illegality must depend entirely, we think, on the quo animo with which it was administered. Within the sphere of his authority, the master is the judge when correction is required, and of the degree of correction necessary; and like all others intrusted with a discretion, he cannot be made penally responsible for error of judgment, but only for wickedness of purpose. The best and wisest of mortals are weak and erring creatures, and in the exercise of functions be rightfully required to engage for more than honesty of purpose, and diligence of exertion. His judgment must be presumed correct, because he is the judge, and also because of the difficulty of proving the offense, or accumulation of offenses, that called for correction; of showing the peculiar temperament, disposition, and habits, of the individual corrected; and of exhibiting the various milder means, that may have been ineffectually used, before correction was resorted to.

But the master may be punishable when he does not transcend the powers granted, if he grossly abuse them. If he uses his authority as a cover for malice, and under the pretense of administering, gratify his own bad passions, the mask of the judge shall be taken off, and he will stand amenable to justice, as an individual not invested with judicial power.

We believe that these are the rules applicable to the decision of the case before us. If they be, there was error

in the instruction given to the jury, that if the child was whipped by the defendant so as to occasion the marks described by the prosecutor, the defendant had exceeded her authority, and was guilty as charged. The marks were all temporary, and in a short time all disappeared. No permanent injury was done to the child. The only appearance that could warrant the belief or suspicion that the correction threatened permanent injury were the bruises on the neck and the arms; and these, to say the least, were too equivocal to justify the Court in assuming, that they did threaten such mischief. We think that the instruction on this point should have been, that unless the jury could clearly infer from the evidence, that the correction inflicted had produced, or was in its nature calculated to produce, lasting injury to the child it did not exceed the limits of the power which had been granted to the defendant. We think also, that the jury should have been further instructed, that however severe the pain inflicted, and however in their judgment it might seem disproportionate to the alleged negligence or offense of so young and tender a child, yet if it did not produce nor threaten lasting mischief, it was their duty to acquit the defendant; unless the facts testified induced a conviction in their minds, that the defendant did not act honestly in the performance of duty, according to her sense of right, but under the pretext of duty, was gratifying malice.

We think that rules less liberal toward teachers, cannot be laid down without breaking in upon the authority necessary for preserving discipline, and commanding respect; and that although these rules leave it in their power to commit acts of indiscreet severity, with legal impunity, these indiscretions will probably find their check and correction in parental affection and in public opinion; and if they should not, that they must be tolerated as a part of those imperfections and inconveniences, which no human laws can wholly remove or redress.

PER CURIAM

JUDGMENT REVERSED

Cited: State v Stalcup, 24 N. C., 52; State v Black, 60 N. C., 264; State v Rhodes, 61 N. C., 457; State v Alfred, 68 N. C., 323; State v McNinch, 90 N. C., 700; State v Jones, 95 N. C., 590; State v Bland, 97 N. C., 443; State v Dowell, 106 N. C., 723; State v Stafford, 113 N. C., 636; State v Long, 117 N. C., 798; Drum v Miller, 135 N. C., 217.⁴

4. State v Pendergrass, 19 N. C. 365.

A Definition of Malice

A definition of malice was handed down in the case of *State v Long*. General malice was defined as. . ."wickedness, a disposition to do wrong, a black and diabolical heart, regardless of social duty and fatally bent on mischief. . .this is malice against mankind. . . ." Speaking of malice which might motivate the desire to punish a child, it was observed: "particular malice is ill will, grudge, a desire to be revenged on a particular person. . . ."6

Principals and teachers are upheld in their right to use discretionary powers in the choice and administration of corrective measures if needed in maintaining good order in the schools. However, such punishments must be reasonable, administered without malice or evil intent and must cause no permanent or lasting damage.

In *Drum v Miller* it was held:

An act done by a teacher in the exercise of his authority, and not prompted by malice, is not actionable, though it may cause permanent injury, unless a person of ordinary prudence could reasonably have foreseen that a permanent injury would naturally or probably result from the act.7

The above decision resulted from the review of a case wherein a teacher had tossed a pencil to attract the attention of an inattentive pupil. He faced the teacher just in time to have the pencil strike him in the eye causing painful and probably permanent injury. While the act was indiscreet, no harm was in-

5. *State v Long*, 117 N. C. 798.

6. *Ibid*.

7. *Drum v Miller*, 135 N. C. 217.

tended nor expected.

As to the degree of pain to be inflicted or with reference to what shall be classified as moderate or immoderate punishment, it will be noted that pain would be administered for the welfare of the pupil. Such pain, however severe, which caused temporary pain only and caused no permanent or lasting injury could not be considered immoderate.

Acting within the sphere of his authority the principal or the teacher is the judge of the type of punishment to be inflicted. As one acts in a judicial capacity, he cannot be held responsible criminally for an error in judgment but only for evil intent. Paragraph three, State v Pendergrass states. . . "his judgment must be presumed correct because he is the judge"⁸

However, should the principal or teacher use this authority for personal reasons of malice or evil, he would no longer be considered the person acting as a judge in the exercise of discretionary powers; therefore, he would be subject to the laws as an individual.

Corporal Punishment -- Risk in Administration

It must be remembered that the principal or the teacher always runs the risk of being charged with using immoderate or unreasonable force in the use of corporal punishment. While the criteria for judging is permanent or lasting injury to the child, or the existence of malice, the final decision rests with the jury if assault and battery is charged against the school official.

8. State v Pendergrass, 19 N. C. 365.

There is a growing sentiment against the use of corporal punishment in the schools of the State. It is believed that except in rare and exceptional cases, other and more satisfactory methods of correction can and should be employed.

It is also of considerable significance to those who are charged with administrative responsibilities within the school and especially the administration of corrective measures upon pupils, that boards of education are vested with full authority to make rules and regulations governing the same. While the courts may not hold the official liable, the boards of education may require his resignation for a violation of its stated regulations. In such cases, the courts will not interfere.⁹

The General Statutes provide that:

All powers and duties conferred and imposed by law respecting public schools, which are not expressly conferred and imposed upon some other officials, are conferred and imposed upon the county board of education.¹⁰

Use Limited by Board of Education

It has been stated earlier in this investigation that no attempt would be made to cite rulings by the various county boards of education or boards of trustees of city administrative units. Some of them have adopted rules and regulations concerning the use of corporal punishment within the schools under their jurisdiction. It is a wise procedure to acquaint one's self with such rules and regulations before the actual administration of corporal punishment.

9. McInnish v Board, 187 N. C. 494.

10. General Statutes, Chapter 115-155.

Marke states: "New Jersey is the only state which by statute has prohibited the use of corporal punishment."¹¹

Messick states:

A thoroughly established rule in the government of a school is that a board of school control is invested with such power as may be delegated to a teacher to punish a pupil for a violation of good order and necessary disciplining; but the nature and the extent of the punishment which may be thus inflicted have always depended upon the circumstances of each individual case. Cruel or excessive punishment is construed to be unreasonable and improper, but any reasonable rule adopted and enforced without malice is within the discretionary power of the teacher or superintendent of a school.¹²

The statutes do not provide punishments for stated offenses because school regulations are designed to meet the particular needs of the school at a given time and in a given place. A regulation might be a necessity for a period of time under special conditions but with the removal of the conditions, the rule would no longer be needed. For example, if the school is erecting a water tank, it might be a matter of life and death that children remain outside a given area. The presence of dangerous machinery, falling debris or the accidental dropping of materials might kill a child. A regulation prohibiting children from approaching this dangerous area would be reasonable, prudent and within the authority of the teacher or principal. Punishment for violating such a regulation would be within the sphere of authority of school officials.

11. David Taylor Marke, Educational Law Simplified, New York: Oceana Publications, 1949, p. 31.

12. John D. Messick, Discretionary Powers of School Boards. Durham: Duke University Press, 1949, p. 105.

Chain of Authority

No special formula can be laid down for the passage of rules and regulations governing the children who attend the public schools of North Carolina. The school boards are vested with broad discretionary powers in their control and administration of the public schools.¹³ The principal is the executive officer of the school and ". . . he shall have authority, subject to the approval of the county superintendent, to grade and classify the pupils, and exercise discipline over the pupils of the school. . . ."¹⁴

The statute further states:

The governing board of the county administrative unit is 'The County Board of Education'. The governing board of the school district is 'The District Committee'. The governing board of a city administrative unit is 'The Board of Trustees'. . . . The executive officer of the county administrative unit, shall be called 'Superintendent'. The executive head of a district or school shall be called 'Principal'.¹⁵

This chain of authority, subject to the approval of the administrative board of education in the district, grants the principal the right to pass all rules and regulations needed for the general welfare and common good of the pupils in the school. These rules must be reasonable and proper. The right to punish, with kindness, prudence and justice, is within the scope of the authority granted by the statutes and upheld by the Supreme Court of the State.

13. General Statutes, Chapter 115-56.

14. Ibid., Chapter 115-148.

15. Ibid., Chapter 115-11.

Summary

The wisdom of using particular punishments is not the concern of this chapter.

Teachers and principals have statutory directions to the effect that they are to maintain good order and exercise discipline over the pupils of the school. These statutes specify suspension as a means of maintaining proper order and discipline in the schools, but not to the exclusion of all other means of correction.

The Supreme Court of North Carolina has ruled in numerous cases that schoolmasters are granted discretionary powers in the use of corrective measures upon the pupils of the schools. In this use, they are not liable under the law unless permanent or lasting injury is done or that punishments are inflicted because of malice or to satisfy their own evil passions.

Teachers and principals are always subject to the risk of being charged with using immoderate or unreasonable force, malice or anger in the administration of corporal punishment on the pupils under their supervision. The final decision in these matters rests with the jury.

Boards of education have the legal right to forbid the use of special types of corrective measures. While these directives do not have the force of law, they may require the resignation of a teacher or principal who violates such ruling by the board of education.

Punishments for stated offenses cannot be established by statute. Rules are made for the benefit of children under certain

conditions. The conditions will vary and punishments for the same offense will vary with different children because of the many personal factors involved.

CHAPTER V

LAWS RELATING TO PUPIL INJURIES

Introduction

Is the principal or the teacher liable in tort action for pupil injuries while he is under the jurisdiction of the public school? Do excursions and trips by athletic teams and other student organizations fall within the category of an extension of the regular school program? Or, do they create a special liability on the part of the school board, the principal or the teacher?

Basic Principles

These questions have been generally answered by the courts in the statement of two principles: (1) School boards are not liable in tort actions because the board is, within its own right, an executive arm of the State. The courts have long held that the State cannot be sued without its consent. In *Benton v Board of Education* the rule is laid down in the case of *Scales v Winston-Salem*, 189 N. C. 127. . . 'negligence cannot be imputed to the sovereign, and for this reason, in the absence of statute, no private action for tort can be maintained against the State'.¹ (2) The principle of negligence is the determining factor with reference to the liability of the

1. Benton v Board of Education, 201, N. C. 653.

principal or the teacher in such an action. If he acts within the scope of his authority and with the dilligence and prudence reasonably expected of an individual serving in a like capacity, the courts will not hold him answerable for such injured. This is established in *Moffitt v Davis*: In this case the court rules:

In *Hipps v Farrell*, 169 N. C. 551, the liability of a public officer is thus stated, at p. 554-5: 'it is recognized in this State, supported, we think, by the weight of well considered authority in other jurisdictions, that one who holds a public office, administrative in character, and in reference of an act clearly ministerial, may be held individually liable, in civil action, to one who has received special injuries in consequence of his failure to perform or negligence in the performance of his official duty. . . . Shearman and Redfield on Negligence (3rd ed.) sec 156, thus state the rule: . . . where his duty is absolute, certain and imperative, involving merely the execution of a set task--in other words, is simply ministerial--he is liable in damages to any one especially injured, either by his omitting to perform the task, or by performing it negligently or in skillfully. On the other hand, where his powers are discretionary, to be exerted or withheld according to his own judgment as to what is necessary or proper, he is not liable to any private person for neglect to exercise these powers, nor for the consequence of a lawful exercise of them where no corruption or malice can be imputed, and he keeps within the scope of his authority'.²

As the executive officer of the school, the principal would be required to exercise reasonable dilligence and care in assuring the safety and well-being of all students. Should a child be injured because of a defect in the building which a reasonable and prudent administrator should have discovered and remedied, he might be held responsible provided he had not made a request for its repair upon the board of education. Or having made such a request, he fails to take reasonable precautions to safeguard the pupils until such repairs could be made, he might

2. Moffitt v Davis, 205 N. C. 565.

be held liable. Likewise, the teacher who failed to make report of such a defect to the principal, the defect being in her room, she might be held liable. The same principle would apply to hazards on the school grounds or any other place or property used as a regular part of the school facilities, and under the direct supervision of the principal or teacher.

Shop or Woodworking Plant

If the injury occurred in a shop or woodworking plant used only for the instruction of the children in the school, the same principle would apply. Because of the added dangers found in such classrooms, it is believed that extra precautions should be taken to assure the safety of those working with machines. However, no relationship of employer and employee would exist in such case and no liability under the provisions of the Workman's Compensation Act would arise.³

Treatment of Injuries or Illness

Since the teacher stands in loco parentis, it would be his responsibility to place an injured or sick child in the hands of his parent if possible. This process would naturally require that the principal, nurse or other person designated for such emergencies be immediately notified of the injury or sickness of the child. If a reasonably prudent man could see the necessity of first aid treatment, it should be given, preferably by one qualified to administer same. If the parent or guardian cannot be reached, the school official should, if in his opinion the seriousness of the injury or illness so requires,

3. Borders v Cline, 212 N. C. 472.

place the child under the care of competent medical authorities at once. This would be the procedure used by a moderately prudent parent with reference to an injury received by his child. This would be the legal requirement of the teacher or principal who stands legally in place of the parent while the child is under the care and supervision of the school. Naturally, the parent or guardian should be reached as soon as possible.

Payment for Treatment

There is no responsibility on the part of the board of education nor upon the officials of the school wherein the injury or illness occurred for the payment of bills or medical expenses incurred in such an injury or illness. Neither is compensation payable by the State unless the injury was caused by the operation of a school bus on the school grounds.⁴

School Bus Injuries

Injuries received while riding on a school bus either to or from public school are cared for by a provision in the statutes. The General Statutes provide that:

The state board of education is hereby authorized and directed to pay. . .to the parent, guardian or executor or administrator of any school child, who may be injured and/or whose death results from injuries received while such a child is riding on a school bus to and from the public schools of the State, medical surgical, hospital, and funeral expenses incurred on account of such injuries and/or death of such child in an amount not to exceed the sum of six hundred and no one-hundredths dollars (\$600.00).⁵

The claim for injuries and/or death must be filed within one year from the date of the accident. The approval of a claim so filed by the State Board of Education is final.

4. Biennial Report of the Attorney General, Vol. 29, p.78.

5. General Statutes, Chapter 115-341.

Claims arising from such an accident as named in the section cited are payable without regard to negligence on the part of the school bus driver.⁶

Liability of School Bus Drivers

If the driver of the bus were of legal age and negligence or carelessness could be proven, he would be subject to such liabilities and penalties as are found in the statutes with reference to such matters.

If the bus driver should be a minor, as many North Carolina school bus drivers are, his parent or guardian could not be held liable for injuries or damages. The courts have held that parents or guardians are not liable for the acts of their children or wards committed outside their presence unless the car or vehicle involved was the family car.⁷

The courts have also ruled:

. . . relationship does not alone make the father answerable for the wrongful acts of his minor child. There must be something beside relationship to connect him with such acts before he becomes liable. It must be shown that he approved such acts, or that the child was his servant or his agent. . . .⁸

The bus driver, in any case, would be subject to the provisions of the laws governing the operation of vehicles on the highways of the State.

Atheletic Injuries

Many injuries arise through student participation in atheletic contests. Likewise, many injuries occur while students

6. Ibid., Chapter 115-344.

7. Brittingham v Stadium, 151 N. C. 299.

8. Ibid.

are being transported to and from such athletic contests. The same principles of law would apply to the transportation of school children to and from the place of participation in any school sponsored program.

With reference to injuries received by students who are participating in school sponsored athletic contests, the Attorney General has clarified the situation in two opinions. He states:

The board of trustees of a city school is not liable for nor does it have the authority to pay medical and other expenses incurred by a student because of injuries received in a practice athletic contest.⁹

The above opinion concerns itself with the legal liability of school boards in such instances. In a later opinion concerning the liability of teachers or other school officials he states:

Under our North Carolina law, neither school officials or teachers are personally liable in damages for injuries suffered by pupils engaged in school sponsored athletic events.¹⁰

Transportation Injuries Not on State School Bus

The matter of injuries suffered by students while being transported to and from school sponsored athletic or other like events presents a different situation. Today many schools use an activity bus for such purposes. This bus is not a part of the State owned and operated school bus fleet, however, it is bought in the name of the county board of education or the board of trustees of a city administrative unit. Such being the

9. Biennial Report, Vol. 28, p. 600.

10. Ibid., Vol. 29, p. 680.

case the liability arising from its operation would be chargeable to the governing body in whose name the title appears. In this instance, the rule of liability established in the case of *Scales v Winston-Salem* would be applicable. Here it was held that "Negligence cannot be imputed to the sovereign, and for this reason, in the absence of statute, no private action for tort can be maintained against the State."¹¹ However, the driver of such a vehicle would be subject to the laws governing the operation of a vehicle upon the highways of North Carolina.¹²

Very many instances occur wherein children are transported to school sponsored events by private conveyance. In such instances, the school incurs no liability for the injuries received. The liability rests upon the owner or driver of the conveyance. The same is true in case of commercial transportation. Such companies or concerns must assume full liability in connection with injuries received while pupils are riding in their vehicles.¹³

Summary

The principle governing liability for pupil injuries is:

1. In the absence of statute, no action can be maintained against the State.
2. Negligence is the factor upon which liability in criminal or tort action might be maintained against a teacher or other school official. If the school official acts within the scope of his authority, with the diligence and prudence expected of a reasonable person, he cannot be held answerable for

11. *Scales v Winston-Salem*, 189 N. C. 127.

12. *State v Folger*, 211 N. C. 695.

13. *Ibid.*

such injuries. This applies to all phases of the teacher-student relationship within the school.

In case of injury or illness, the teacher or principal must, if in his opinion the seriousness of the injury or illness would cause a reasonable or prudent individual to believe it necessary, place the child in the hands of his parent or guardian. If this be impossible, he would be required, under the same circumstances, to place the child under the care of competent medical authorities. If first aid is required, he should render same to the best of his ability. For such medical attention or treatment, neither school officials nor the board of education are liable.

The State will pay a sum not to exceed six hundred dollars to compensate for injuries and/or death of any child, or to pay medical and hospital bills of such child who is injured while riding to and from school on a school bus.

Parents cannot be held liable for the acts of minor children unless the acts are committed in their presence or have expressed approval of the act. The doctrine of the family car is excepted.

Under North Carolina law, school officials cannot be personally liable in damages for injuries sustained by pupils engaged in school sponsored athletic events.

Children who are being transported to and from school sponsored events of any type are under the supervision of an agency of the State. Therefore, in case of an injury, school officials cannot be held liable in damages for the same.

Should transportation be by private automobile, the liability in damages would be the same as might be applied in any other situation.

CHAPTER VI

LAWS RELATING TO STATE SCHOOL BUSES AND DRIVERS

Introduction

The subject of transportation of students to and from school sponsored athletic contests was covered in a previous chapter. This chapter concerns itself with the choice, qualifications, duties and liabilities of school bus drivers. Their responsibilities are as great as those imposed upon any like group anywhere, consequently, their choice, and selection should be made with great care.

Standard Qualifications

The standard qualification for school bus drivers is defined by statute as follows:

No person shall drive or operate a school bus over the public roads of North Carolina while the same is occupied by children unless said person shall be fully trained in the operation of motor vehicles, and shall furnish to the superintendent of the school of the county in which said bus shall be operated a certificate from the highway patrol of North Carolina, or from any representative duly designated by the commissioner of motor vehicles, and the chief mechanic in charge of school buses in said county showing that he has been examined by a member of the said highway patrol and said chief mechanic in charge of school buses, in said county and that he is a fit and competent person to operate or drive a school bus over the public roads of the state.¹

It is a matter of common knowledge that no person can obtain a license to drive a motor vehicle upon the highways or

1. General Statutes, Chapter 20-218.

public roads of the State until he shall have arrived at the age of sixteen years, learner's permissions excepted. Bus driver's certificates cannot be issued until a driver's license has been obtained.

Selection and Employment

Concerning the selection and employment of school bus drivers the General Statutes state:

The authority for selecting and employing the drivers of school buses shall be vested in the principal or superintendent of the school at the termination of the route, subject to the approval of the school committeemen or trustees of said school and the county or city superintendent of schools; provided that each driver shall be selected with a view to having him located as near the beginning of the truck route as possible; and it shall be lawful to employ student drivers wherever such is deemed advisable. The salary paid each employee in the operation of the school transportation system shall be in accordance with a salary schedule adopted by the state board of education for that particular type of employee.²

Because of the peculiar responsibility imposed upon school bus drivers, their choice should be made only after careful study of the personal qualifications of each applicant. The fact that an individual can drive a motor vehicle to the satisfaction of an examining official, in no wise, fully qualifies him for the responsibilities associated with the transportation of children of all ages and under all conditions to the public schools of this State.

It is the opinion of the author that special consideration or privilege be shown these drivers in recognition of the service rendered to the children and their parents. If their qualifications and actions do not merit such consideration, they

2. Ibid., Chapter 115-378.

should be discharged and replaced by others who can and will so qualify.

The North Carolina Department of Motor Vehicles, Division of Highway Safety in co-operation with the North Carolina State School Commission, now the State Board of Education, has prepared and published a "Handbook for School Bus Drivers" in which their qualification, responsibilities, duties, and professional attitudes are discussed in detail. His age shall be at least sixteen years and not over sixty years. As to his physical and mental qualifications, it is stated:

Each school bus driver shall be able-bodied, free from communicable disease, mentally alert, and sufficiently strong physically to handle the bus with ease, and to make emergency repairs.³

Smoking on the bus while children are being transported or while the bus is empty is expressly forbidden. Likewise, the use of alcohol or other stimulants is forbidden.⁴

Conduct on Buses

The driver's responsibility in handling the pupils who ride with him is stated as follows:

The school bus driver is required:

1. To maintain order and discipline on the part of each child in his care, and with the assistance of the principal when it is advisable, assign seats to children.

The driver is required to carry out whatever regulations are set up by the school principal relative to discipline.

2. Report immediately to the school principal

3. North Carolina Department Motor Vehicles, Handbook for School Bus Drivers, Division of Highway Safety, Raleigh: 1940. p. 5.

4. Ibid., p. 10.

any occurrence or situation in which any child has refused to maintain good order while in his care.⁵

The State Board of Education has set up certain regulations which are to govern the conduct of pupils while riding on the bus. They are:

1. Obey the bus driver promptly and cheerfully concerning conduct on the bus.
2. Observe classroom conduct (except ordinary conversation) while getting on or off and while riding in the bus.
3. Occupy the seat assigned by the driver or principal and to refrain at all times from moving around while the bus is in motion.
4. Refrain from the use of tobacco, and from profane and indecent language while riding on the bus.
5. Keep head and hands inside the bus windows at all times.
6. Keep the bus clean, sanitary and orderly and to refrain from damaging or abusing cushions or other bus equipment.
7. Request the driver to stop the bus, in case of personal emergency.⁶

There are other regulations governing the actions of the school bus operator relative to loading and unloading pupils. These are:

1. Never move bus while pupils are entering or leaving it. See that all doors are closed when bus is in motion.
2. Never use rear door for loading or unloading pupils except in an emergency.
3. Admit or discharge pupils only when the bus is parked on the right hand side of the road, on edge of

5. Ibid., p. 29.

6. Ibid.

pavement, or in regular driving lane. Do not pull bus off highway on shoulders of the road for loading and unloading pupils.

4. Never leave any bus stop ahead of schedule.
5. Unload a child only at regular stop, except upon written request of parent or principal.
6. At no time permit children to cross the highway from behind the bus except in an emergency situation and with an escort.
7. Supervise the activities of children unloaded from the bus until they have crossed the highway safely or are otherwise out of danger.⁷

Use of School Buses

The transportation of children who ride a school bus to and from the public schools is under the control, administration and supervision of the State Board of Education. The State Board of Education is granted full authority to promulgate all needed rules and regulations for the organization, maintenance and operation of the transportation system for the public schools.⁸

Inspections

Provision is made in section 115-374 of the General Statutes for the inspection of all school buses at least once in each thirty days and the administrative officer of each unit is required to cause such inspection to be made. The driver of any school bus is required to report any defect found in his motor vehicle to the principal of the school who shall immediately report same to the administrative officer of the unit. It shall be his duty to cause said defect to be

7. Ibid., p. 30.

8. General Statutes, Chapter 115-374.

remedied before the vehicle may be used in the transportation of children to and from the schools of the unit.⁹

The same statute provides that:

The use of school busses shall be limited to the transportation of children to and from school for the regularly organized school day; Provided in cases of sudden illness or injury requiring immediate medical attention of any child or children while attending the public schools, the principal of the school may send the child or children by school bus, if no other vehicle is available, to the nearest doctor or hospital for medical treatment; provided the expense of such transportation shall be paid from county funds.¹⁰

Subject to regulations adopted by the State Board of Education school buses are allowed for the transportation of school children on necessary field trips while pursuing vocational courses or to and from special demonstration projects connected with these courses but the mileage cannot exceed twenty-five miles on any one trip, nor can a school bus leave the State. The drivers shall be chosen and paid as the regular drivers of the unit are chosen and paid.¹¹

School buses may be used to transport accredited teachers on active duty to and from school for the regular school day; however, buses are not to be routed for the convenience of any such teacher, nor shall they take the place of any child on the bus. They are to assume no duty or responsibility while riding on such bus and the bus driver shall retain all authority vested in him by the officials of the school. Under

9. Ibid.

10. Ibid.

11. Ibid.

such circumstances, no claim for an injury received by such teacher will be granted by the State Board of Education.¹²

When ordered by the governor, school buses shall be furnished for the transportation of the North Carolina State Guard or the National Guard to authorized places of encampment or wherever they are needed for the suppression of riots or execution of any other duty imposed upon the guard. The drivers for such buses shall come from the organization called into action.¹³

Buses may be used one day prior to the opening of the regular term for the purpose of transporting children to the schools for registration and other activities necessary to the efficient organization of the school for regular work.¹⁴

Bus Routes

The General Statutes provide that:

...the state board of education shall, in co-operation with the district principal, unless road or other conditions make it inadvisable, route the buses so as to get within one mile of all children who live more than one and one-half miles from the school to which they are assigned; provided, that all routes so established shall be subject to the approval of the county board of education and with a view to the needs of the students to the end that the necessity of students waiting on the road for buses in inclement weather be eliminated. The State shall not be required to provide transportation for children living within one and one-half miles of the school in which provision for their instruction has been made. All bus routes thus established shall be filed with the county board of education prior to the opening of school; and in the event any of said routes are disapproved by the county board of education, notice of same shall be filed with the

12. North Carolina, Session Laws, Charlottesville; Michie, 1949, p. 78.

13. General Statutes, Chapter 115-374.

14. Ibid., Chapter 115-375.

state board of education, and a hearing on such appeal shall be had by said board within thirty days.¹⁵

In 1947 Chapter 115-376 of the General Statutes was amended to provide the State Board of Education with the power to cause school buses to be routed to within one-half mile of children who live more than one and one-half miles from the school to which they are assigned. This provision is not mandatory but discretionary.¹⁶

Rules and regulations for the establishment of bus routes are sent to school principals from the office of the State School Bus Supervisor. These rules are consistent with the statutes and explain several matters in detail which are not specifically covered by statute. From the letter of May 2, 1949 some of the most important items are:

1. Select your drivers within your school district. ('under no circumstances shall the principal select and employ, or the committeemen or superintendent approve the selection and employment of any school bus driver residing outside their respective school district or attendance area') State Board of Education Regulation July 4, 1945.

2. . . . do not route a bus over a road that would be a hazzard to the lives of children. . . .

3. . . . be sure that buses on being dismissed are spaced not closer than 100 yards apart as they leave the loading point. . . .

4. Do not route a bus on a road that is not maintained by State Highway and Public Works Commission.

5. Physically handicapped children. . .to be entitled to school bus service above that which is consistent with existing regulations must:

15. Ibid., Chapter 115-376.

16. North Carolina, Public Session Laws, Charlottesville: Michie, 1949. p. 1577.

- a. Be examined by local county health officer.
- b. Must receive written certificate from the county health officer to the effect that without special transportation service unusual hardship would be encountered in walking the required distance to the regular bus route.
- c. Receive written approval for such service from the Division of Transportation, State Board of Education, upon presentation of certificate.
- d. Approval of same shall terminate at the end of each school year or at the time during the year when the condition of the child has become normal.

6. . . . School bus stops are to be set up on each route not less than 0.2 mile apart with a view of serving all children alike. During periods of inclement weather, buses may be allowed to stop at safe points on the approved route nearest the home of each child.¹⁷

Careful study and proper routing of school buses will prove to be a most valuable contribution to the safety and well-being of the children who ride buses to the schools. The satisfactory arrangement of bus routes will likewise contribute heavily toward establishment of a better relationship between parents and school officials.

Contract Transportation

In certain sections of the State where transportation of children to the public school by state school buses is not practical or feasible, the state will provide funds for private or contract transportation of such children to the public schools.¹⁸

Highway Protection

A loaded school bus traveling on the highways presents a problem quite unlike that of any other type of vehicle. From

17. North Carolina State Board of Education, Division of Transportation, Procedures and Regulations for Routing School Buses, 1949-1950, Raleigh: May 2, 1949, 2 pp. Mimeographed Letter.

18. General Statutes, Chapter 115-379.

over a wide territory this bus, driven by a schoolboy about seventeen years of age, has gathered in a load of approximately fifty children. He is responsible for the safe conduct of this precious cargo to the school to which they have been assigned and to return them safely home after the close of the school day. Some of these children will be just over six years of age with little or no concept of the dangers which threaten as they load or unload from the side of the roads and especially as they cross the highways before or after unloading from the bus. Neither do they know or realize the danger threatened by playing, scuffling, shouting or fighting while the bus is in motion. The older children, though they are conscious in a remote sort of way of the danger present, often behave as though no thought of such had ever entered their minds. The responsibility resting upon the shoulders of this schoolboy driver is of no little significance. This is the reason why he has been given authority over those who ride on his bus. He also has the aid and assistance of the Safety Patrol or Bus Patrol or both. With the aid of the principal, the driver and his aids can maintain order and discipline on the bus. However, these can have no control over the actions of other persons who drive on the highways of the State. Therefore, it has become necessary to control their actions, in part, by statute. Chapter 20-217 of the General Statutes was amended in 1947 to read as follows:

Every person operating or driving a motor vehicle upon or over the roads or highways of the State of North Carolina, or upon or over the streets of any of the incorpor-

ated towns and cities of North Carolina, upon approaching from any direction on the same highway any school bus transporting to or from school or any church or Sunday School bus transporting to or from church or Sunday School, while such bus is stopped and engaged in receiving or discharging passengers therefore upon the roads or highways of the State or upon any of the streets of any incorporated cities and towns of the State, shall bring such motor vehicle to a full stop before passing or attempting to pass such bus and shall remain stopped until said passengers are received or discharged at that place and until the 'stop signal' of such bus has been withdrawn or until such bus has moved on.¹⁹

The above provisions apply provided the bus is plainly marked, front and rear, with letters designating the type of bus at least five inches in height. Children should always cross the highway under the protection of this 'stop signal' provided on the bus. They should always cross in front of the bus under the watchful eye of the bus driver and the member of the Safety or School Bus Patrol.

Many people drive by these buses every day, little thinking that the three minutes saved by rushing by or easing by might cost the lives of some of these children. A program of adult education in the community will do much to cause such practices to cease. A program of a like nature within the school will educate the parents of tomorrow to the fact that this practice is very dangerous and should be stopped.

The State Highway Patrol is most co-operative in bringing individuals who violate this statute before the courts. A form to be filled out by the bus driver stating the place of the offense, type of vehicle, license number and any infor-

¹⁹. North Carolina, Public Session Laws, Charlottesville: Michie, 1947, p. 662.

mation which may help in the identification of the driver of the vehicle might be mailed to the State Highway Patrol by the principal of the school. This is not the acceptable type of driver education but it is rather effective.

Summary

Drivers of state owner and operated school buses must be able bodied, of sound mind, at least sixteen and not over sixty years of age, must have been fully trained in the operation of motor vehicles and shall be properly certified by the State Highway Patrol as being fit and competent persons to drive or operate a school bus over the public roads of the state.

The selection of school bus drivers is one of the most important functions of the principal of the school at the end of the route. These selections must be approved by the committee-men or trustees of the school.

Special consideration should be shown those who prove reliable and competent in school bus operation.

Smoking and the use of alcohol or other stimulants is forbidden.

A school bus driver is required to maintain order and discipline on the part of each child who rides his bus. He is to report any defect in the operation of his bus to the principal of the school immediately. He exercises disciplinary power delegated to him by the principal of the school but has no authority to inflict corrective measures except through the principal.

The State Board of Education has promulgated certain

rules and regulations governing the conduct of children while riding on a school bus. Certain other regulations have been established with reference to loading and unloading children.

School buses are to be used for the purpose of transporting children to and from the school for the regularly organized school day. They may be used one day prior to the opening of the regular school term for the purpose of pupil registration, organization of classes and distribution of textbooks. These buses may be used to transport pupils who are taking special vocational subjects or on field trips or demonstration projects connected with such courses. No trip may exceed twenty-five miles and no school bus may be taken outside the State.

School buses may be used to transport regular teachers to and from school but routings cannot be made for the convenience of said teachers. The bus driver has full control over the children of such bus while teachers are passengers. Upon order of the governor of North Carolina, school buses will be provided for the use of the State Guard or National Guard in any scheduled activity of such guard, drivers to be provided by the guard.

Bus routes shall be so established as to come within one mile of all children who live more than one and one-half miles from the school to which they are assigned by the board of education. The State Board of Education may, in its discretion, route buses to come within one-half mile of all children who live more than one and one-half miles from the school. The

district principal with the consent and approval of the State Board of Education is charged with the routing of the buses.

Regulations are issued each year relative to routing of school buses. Some of the most important are: drivers must be selected from the district served by the school, buses must not be routed over hazardous roads not maintained by the State Highway and Public Works Commission; physically handicapped children are entitled to bus service over and above that required by State regulations; bus stops are to be spaced 0.2 miles apart with a view to serving all children alike; and during periods of inclement weather, buses may stop at safe points nearest the home of each child.

Under certain conditions the State will provide funds for contract transportation of school children to and from school.

Motor vehicles of all types shall come to a complete stop and remain so until any school or Sunday School bus has completed loading or unloading children and shall have lowered the stop sign. However, the bus must be plainly marked, front and rear, with letters at least five inches high, designating the type of bus.

BIBLIOGRAPHY

BIBLIOGRAPHY

Marke, David Taylor. Educational Law Simplified. New York: Oceana Publications, 1949. 96 pp.

Messick, John D. The Discretionary Powers of School Boards. Durham: Duke University Press, 1949. 147 pp.

North Carolina. Attorney General. Biennial Report, 1942-1944. Raleigh: State Printing Office, 1944. 732 pp.

_____. Biennial Report, 1944-1946. Raleigh: State Printing Office, 1946. 867 pp.

_____. Biennial Report, 1946-1948. Raleigh: State Printing Office, 1948. 921 pp.

North Carolina. General Statutes: Vol. 1 and Cum. Supp. Charlottesville: The Michie Company, 1943. 1117 pp.

_____. General Statutes: Vol. 3 and Cum. Supp. Charlottesville: The Michie Company, 1943. 1218 pp.

North Carolina. Records. Charlottesville: The Michie Company. Cases Cited:

State v Pendergrass, 19 N. C. 365; Hare v Board of Education, 113 N. C. 9; State v Long, 117 N. C. 798; Drum v Miller, 135 N. C. 217; Brittingham v Stadlem, 151 N. C. 217; McInnish v Board, 187 N. C. 494; Scales v Winston-Salem, 189 N. C. 127; Benton v Board of Education, 201 N. C. 653; Moffitt v Davis, 205 N. C. 695; Borders v Cline, 212 N. C. 472; Coggins v Board of Education of City of Durham, 223 N. C. 763.

North Carolina. Session Laws, 1943. Charlottesville: The Michie Company, 1943. 1160 pp.

_____. Session Laws, 1945. Charlottesville: The Michie Company, 1945. 1725 pp.

_____. Session Laws, 1947. Charlottesville: The Michie Company, 1947. 1911 pp.

_____. Session Laws, 1949. Charlottesville: The Michie Company, 1949. 2040 pp.

North Carolina. Department Motor Vehicles, Division of Highway Safety. A Handbook for School Bus Drivers. Raleigh: State Printing Office, 1940. 47 pp.

North Carolina. Superintendent of Public Instruction. Compulsory School Attendance, Raleigh: State Printing Office, 1945. 24 pp.

North Carolina. Superintendent of Public Instruction. Procedures and Regulations for Routing School Buses: Letter to Principals, May 2, 1949. 2 pp.

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